

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations,)
(Stamps and Fouke, Michigan))

MM Docket No. _____
RM - _____

To: Chief, Allocations Branch
Policy & Rules Division, Mass Media Bureau

PETITION FOR RULE MAKING

In Phase Broadcasting, Inc. ("In Phase"), by Counsel, and pursuant to §§ 1.401 and 1.420 of the Commission's Rules, hereby respectfully petitions the Commission to institute Rule Making proceedings for amendment of the FM Table of Allocations, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Stamps, Arkansas	263, 282	263
Fouke, Arkansas	---	282

In support hereof, the following is shown:

Background

1. In Phase has been issued Construction Permit BPH-970716MD for a new FM radio station at Stamps, Arkansas. This radio station would serve as the second aural service to Stamps, inasmuch as Radio Station KZHE-FM on Channel 263 is currently licensed to Stamps.

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2. In Phase proposes the reallocation of Channel 282 from Stamps to Fouke, Arkansas, and the modification of Construction Permit BPH-970716MD to specify Fouke as its community of license so that In Phase's new FM radio station can better serve the public through the most efficient use of its frequency. The reallocation of Channel 282 to Fouke, Arkansas would provide that community with its first local aural service, and Stamps would continue to receive local aural service from Radio Station KZHE-FM.

Technical Criteria

3. An allocation study conducted by In Phase's consulting engineer shows that Channel 282 may be reallocated to Fouke, Arkansas in compliance with §73.213(c) and §73.207 spacing requirements to all other applicable facilities. *See, Attachment No. 1 (Technical Statement of Jefferson G. Brock of Graham Brock, Inc.)*

Community Qualifications of Fouke, Arkansas

4. Fouke, Arkansas is qualified and deserving to receive the reallocation of Channel 282 since it is an incorporated town, has its own elected government (a mayor and city commissioner), its own fire department and police department, its own school system for grades kindergarten through 12th grade, provides its own water service, and has been assigned its own postal zip code -- 71837. Fouke is home to numerous schools, businesses and

a house of worship that use the Fouke name, such as:

Fouke Preschool
Fouke Elementary School
Fouke High School
Fouke Alternative School (Tele. 870-653-2332)
Fouke Adult Education Center (Tele. 870-653-4474)
Fouke Garage Welding & Machine (Tele. 870-653-4313)
Fouke Food Center (Tele. 870-653-4621)
Fouke Tool & Die Shop (Tele. 870-653-2585)
Fouke Church of Christ (Tele. 870-653-4866)
Fouke Fire Department (Tele. 870-653-6022)
Fouke Police Department (Tele. 870-653-3802)

In Phase submits that when all of the above factors are considered -- namely, an incorporated town, the Fouke Zip Code, the use of the Fouke name in businesses, schools, and a churches and the establishment of a local government, school system, police department and fire department -- the Commission should agree that Fouke has a geographically identifiable population grouping and that objective indicia of community status are present.

*See, FM Channel Assignments: Middletown, California, 69 RR 2d 1626 (MMB 1991).*¹

5. Since the community of Fouke, Arkansas is located within the Texarkana Urbanized Area, the Commission should take notice of the facts supporting a showing that Fouke is independent of the city of Texarkana. As noted above, Fouke has its own elected government, its own postal zip code,

¹ The foregoing information concerning the community of Fouke, Arkansas was obtained from the Texarkana Chamber of Commerce (Tele. 903-792-7191) and an Internet Yellow Pages search for Fouke, Arkansas.

and provides its residents with water, police and fire municipal services. Accordingly, Fouke warrants a first local service allotment. *See, Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10342 (1995).*

Public Interest Showing

5. Acceptance of this Petition and the modification of Construction Permit BPH-970716MD to specify Fouke as its community of license is in the public interest. The reallocation of Channel 282 to Stamps, Arkansas will permit In Phase to increase its proposed areas and population of service from 35,166 persons to 63,940 persons (within 2,513.3 square kilometers). Furthermore, this proposal provides first local aural service to the community of Fouke, without depriving Stamps of any local aural service since Radio Station KZHE-FM would continue to operate at Stamps. Based upon the foregoing, In Phase submits that this proposal results in a preferential arrangement of allotments, a new service benefit to the communities involved, and qualifies for consideration without affording other interested parties an opportunity to file competing expressions of interest. *See, Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).*

Statement of Continuing Interest

6. In Phase hereby states that, should the Commission institute the requested Rule Making proceedings and ultimately adopt the amendment to the FM Table of Allotments proposed herein, it would file an application for

modification of Construction Permit BPH-970716MD to specify a new transmitting site while concomitantly specifying Fouke as its community of license.


Conclusion

WHEREFORE, the above premises considered, In Phase respectfully urges that the Commission commence Rule Making Proceedings proposing to amend § 73.202(b) of the Commission's Rules, FM Table of Allotments, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Stamps, Arkansas	263, 282	263
Fouke, Arkansas	---	282

Respectfully submitted,

IN PHASE BROADCASTING, INC.

By: 
Cary S. Tepper

Its Attorney

Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016-4120

(202) 686-9600

January 21, 1999

Attachment No. 1

(Technical Statement of Jefferson G. Brock)

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

PETITION FOR RULE MAKING
IN PHASE BROADCASTING, INC.
RE-ALLOT CHANNEL 282A
FOUKE, ARKANSAS
January 1999

TECHNICAL EXHIBIT

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PETITION FOR RULE MAKING
IN PHASE BROADCASTING, INC.
RE-ALLOT CHANNEL 282A
FOUKE, ARKANSAS
January 1999

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of In Phase Broadcasting, Inc. ("IPB"), permittee of station KLMZ, Channel 282A, Stamps, Arkansas. IPB herein seeks the re-allotment of Channel 282A from Stamps, Arkansas, to Fouke, Arkansas. The allotment of Channel 282A will provide Fouke with its first local transmission service, without depriving Stamps of service. The allocation of Channel 282A to Fouke, Arkansas, is mutually exclusive with the present allotment at Stamps.

DISCUSSION

2. IPB presently holds a construction permit for station KLMZ, Channel 282A, Stamps, Arkansas. KLMZ has not yet been constructed. Therefore, the re-allotment of KLMZ would not deprive Stamps of service, since no service from the station has been established. Further, station KZHE, Channel 263C2, is licensed to Stamps and is operational.

3. Fouke, Arkansas, is an incorporated community located in southern Miller County, Arkansas. Fouke, Arkansas, is listed in the 1990 U.S. Census, as having a population of 643 persons. Presently, there are no local AM or FM services licensed to the community. Therefore, the allocation of Channel 282A to Fouke will provide the first locally licensable service to the community.

4. Fouke is near the Texarkana (Arkansas/Texas) urbanized area. As shown on Exhibit #1, the city grade of the theoretical KLMZ, operating from the reference site for Channel 282A at Fouke, Arkansas, as a maximum Class A facility, will not deliver city grade service (70 dBu) to any of the Texarkana Urbanized Area.¹ This proposed re-allotment is, therefore, not a migration from a rural area to an urban area. Further, as noted above, the removal of KLMZ from Stamps will not deprive Stamps of its only service, since FM station KZHE will remain licensed to Stamps.

REQUEST

6. Channel 282A can be allotted to Fouke, Arkansas, without the imposition of a site restriction, at reference coordinates North Latitude 33° 15' 42" and West Longitude 93° 53' 06. Attached as Exhibit #2 is a usable area map for Channel 282A at Fouke, Arkansas. Further, attached as Exhibit #3 is a §73.207 spacing study which shows Channel 282A, at the proposed allocation site, is fully spaced to all other licensed, applied for or proposed facilities (with the exception of the outstanding KLMZ construction permit).² A 3.16 mV/m signal will be delivered to Fouke, Arkansas, from the proposed reference site.

-
- 1) As shown on Exhibit #1, the 70 dBu contour of the proposed Channel 282A allocation to Fouke clearly does not cover any of the urbanized area. As such, an analysis pursuant to the Faye and Richard Tuck case is unnecessary.
 - 2) The spacing study shows the proposed allocation of Channel 282C2 at Paris, Texas. The allotment was part of MM Docket #95-126 in which Channel 282C2 was to be substituted for Channel 270C2 at Paris, Texas (among other changes). On review, the Commission noted it was no longer necessary to make this substitution, leaving Channel 270C2 in Paris, Texas. As a result of the conclusion of the docket, which was released on January 8, 1999, this proposed allotment will not be necessary and it is, therefore, not considered an impediment to this instant request.

8. Therefore, In Phase Broadcasting, Inc., proposes the following changes to §73.202(b) of the Commission's rules:

Stamps, Arkansas

<u>Present</u>	<u>Proposed</u>
263C2, 282A	263C2

Fouke, Arkansas

<u>Present</u>	<u>Proposed</u>
None	282A

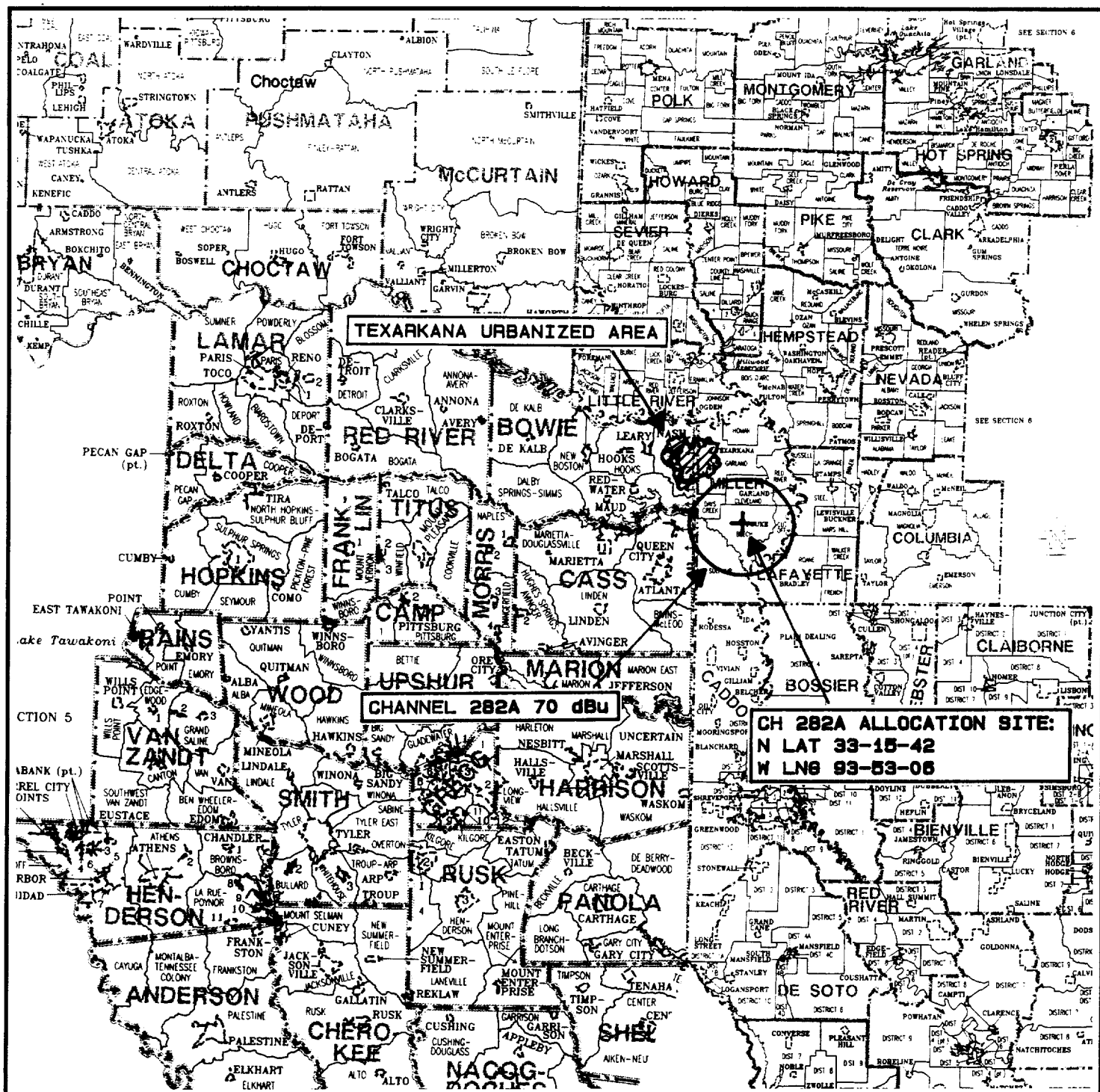
PUBLIC INTEREST ASPECTS

9. The relocation of Channel 282A from Stamps, Arkansas, to Fouke, Arkansas, will allow KLMZ to provide Fouke with its first locally licensed FM facility. Once relocated, KLMZ on Channel 282A could provide service to 63,940 persons in 2,513.3 square kilometers.³ Further, Stamps will not be deprived of service since station KZHE will remain licensed to the community (and since KLMZ has not initiated service, there is no actual loss). When Channel 282A is allotted to Fouke, Arkansas, IPB will file a minor change application to modify the outstanding KLMZ construction permit to specify operation on Channel 282A at Fouke, Arkansas.

10. This technical statement and attachments were prepared on behalf of In Phase Broadcasting, Inc., by Graham Brock, Inc., its Technical Consultants. All information contained

3) This represents an increase of 35,166 persons over the population to be served by the authorized permit.

herein is true and accurate to the best of our belief and knowledge. All data relating to FM allocations and licensed, applied for or proposed facilities was extracted from the NTIA FM database, as updated on January 8, 1999. We assume no liability for errors or omissions in that database which may be adverse to the request contained herein.



TEXARKANA URBANIZED AREA DETAIL

MAP IS A COMPOSITE OF THE 1990 CENSUS
 MAPS OF ARKANSAS, TEXAS, LOUISIANA AND
 OKLAHOMA

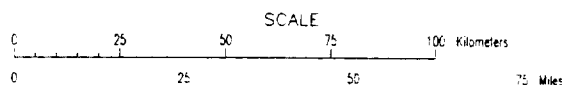
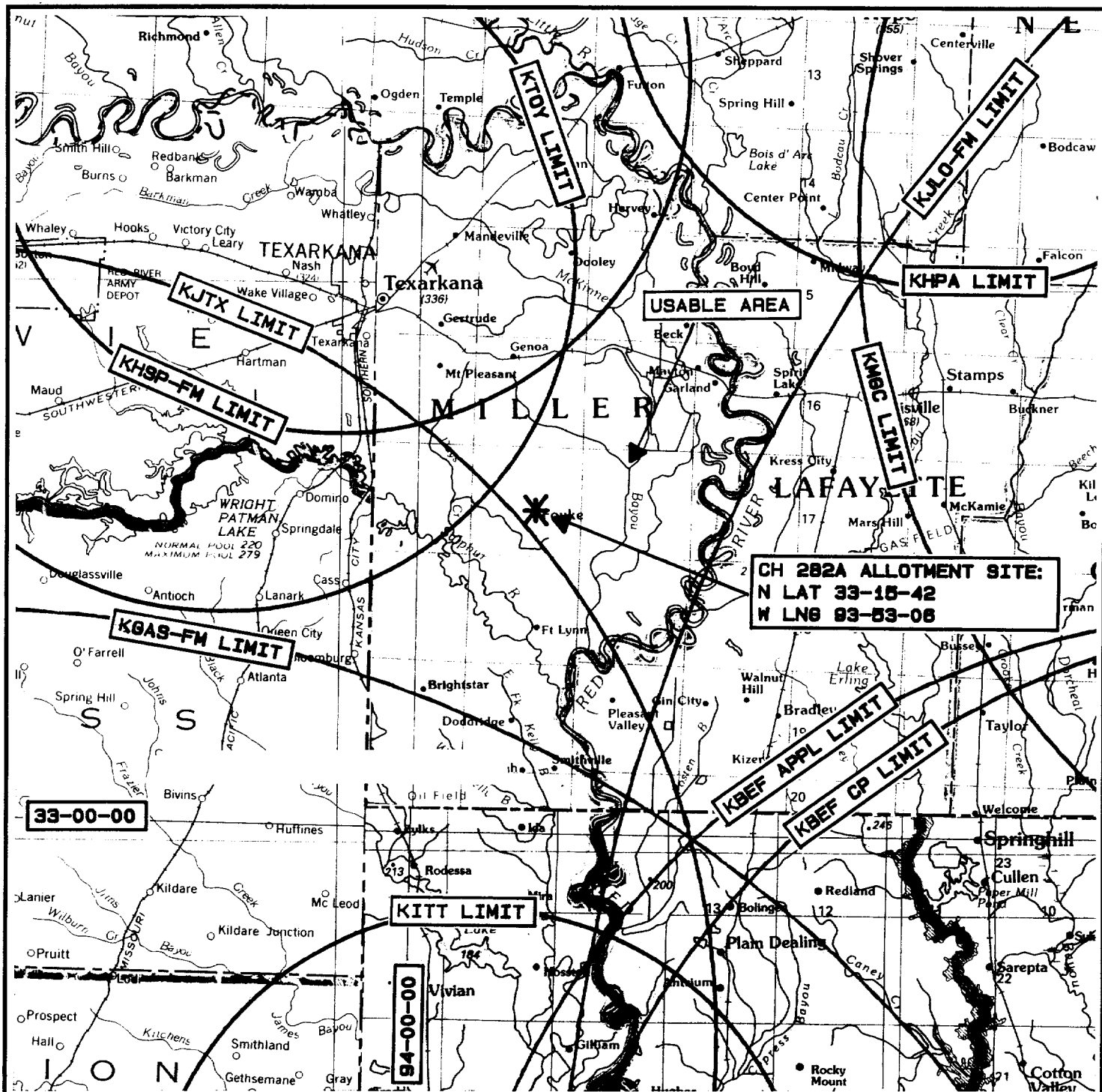


EXHIBIT #1

PETITION FOR RULE MAKING
 IN PHASE BROADCASTING, INC
 RE-ALLOT CHANNEL 282A
 FOULKE, ARKANSAS

January 1999

GRAHAM BROCK, INC.
 BROADCAST TECHNICAL CONSULTANTS



USABLE AREA MAP

MAP IS A COMPOSITE OF THE 1: 500, 000 SCALE
U.S.G.S. BASE STATE MAPS OF ARKANSAS,
TEXAS AND LOUISIANA

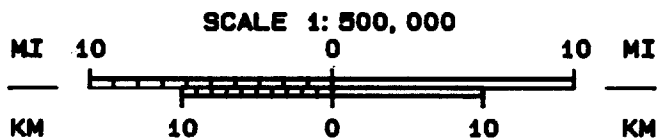


EXHIBIT #2

PETITION FOR RULE MAKING
IN PHASE BROADCASTING, INC
RE-ALLOT CHANNEL 282A
FOUKE, ARKANSAS

January 1999

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

PETITION FOR RULE MAKING
IN PHASE BROADCASTING, INC.
RE-ALLOT CHANNEL 282A
FOUKE, ARKANSAS
January 1999

EXHIBIT #3

ALLOCATION STUDY FOR FOUKE, ARKANSAS
USING CITY CENTER COORDINATES AS REFERENCE

REFERENCE				CLASS A		DISPLAY DATES		
33 15 42 N						DATA 01-15-99		
93 53 06 W				Current rules spacings		SEARCH 01-15-99		
-----				CHANNEL 282 -104.3 MHz		-----		
CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)	

KLMZ.C	282A	Stamps	AR	50.9	32.51	115.0	-82.49	
CP CN	33 26 45	93 36 48	6.000 kW	100M	20.2	71.5		
In Phase Broadcasting, Inc.				BPH-970716MD				
AD282	282C2	Paris	TX	291.4	152.10	166.0	-13.90	
AD	33 45 04	95 24 51	0.000 kW	0M	94.5	103.2		
Hunt Broadcasting, Inc.				RM-8671				
>Petition for Review MM Docket #95-1126								
KJTX	283A	Jefferson	TX	228.6	73.55	72.0	1.55	
LI CN	32 49 23	94 28 32	2.300 kW	162M	45.7	44.8		
Wisdom Ministries, Inc.				BLH-971211KB				
KTOY	284A	Texarkana	AR	308.2	35.19	31.0	4.19	
LI ZCN	33 27 25	94 10 59	3.000 kW	119M	21.9	19.3		
Jo-Al Broadcasting, Inc.				BLH-920929KA				
KHSPFM	280A	Ashdown	AR	334.8	41.73	31.0	10.73	
LI CN	33 36 06	94 04 38	5.100 kW	108M	25.9	19.3		
Beat OF His Heart Broadcasting				BMLH-900716KD				
KJLOFM	281C	Monroe	LA	111.3	180.82	165.0	15.82	
LI CN	32 39 36	92 05 15	6.800 kW	137M	112.4	102.6		
New South Communications, Inc.				BLH-970520KB				
KGASFM	282A	Carthage	TX	202.3	134.13	115.0	19.13	
LI CN	32 08 33	94 25 39	6.000 kW	100M	83.4	71.5		
Hanszen Broadcasting				BLH-920918KF				
KMGC	283A	Camden	AR	74.6	103.52	72.0	31.52	
LI ZCN	33 30 14	92 48 38	3.000 kW	100M	64.3	44.8		
JADE Communications, Inc.				BLH-941201KA				
KBEF.A	283A	Gibbsland	LA	141.2	103.56	72.0	31.56	
AP ZCN	32 31 59	93 11 34	6.000 kW	100M	64.4	44.8		
Northstar Enterprises, Inc.				BMPH981109ID				

* See Footnote 2 in Technical Statement. This allotment no longer necessary and is, therefore, not considered an impediment.

PETITION FOR RULE MAKING
IN PHASE BROADCASTING, INC.
RE-ALLOT CHANNEL 282A
FOUKE, ARKANSAS
January 1999

EXHIBIT #3 (continued)

ALLOCATION STUDY FOR FOUKE, ARKANSAS
 USING CITY CENTER COORDINATES AS REFERENCE

REFERENCE		CLASS A	DISPLAY DATES
33 15 42 N			DATA 01-15-99
93 53 06 W		Current rules spacings	SEARCH 01-15-99
----- CHANNEL 282 -104.3 MHz -----			

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
KHPA	285A	Hope	AR	35.8	62.90	31.0	31.90
LI ZCN	33 43 12	93 29 11	6.000 kW	100M	39.1	19.3	
		Newport Broadcasting Co.			BLH-971217KE		
KITT	229C	Shreveport	LA	183.5	64.91	29.0	35.91
LI CY	32 40 39	93 55 41	100.000 kW	308M	40.3	18.0	
		Multimedia Radio, Inc.			BLH-840607CO		
KBEF.C	283A	Gibbsland	LA	137.8	109.03	72.0	37.03
CP ZCN	32 31 57	93 06 12	3.000 kW	100M	67.8	44.8	
		Northstar Enterprises, Inc.			BPH-960725MA		
KBII.C	281C2	Hatfield	AR	347.8	152.94	106.0	46.94
CP ZCN	34 36 31	94 14 19	35.000 kW	170M	95.1	65.9	
		Bobby Caldwell			BPH-961031MB		
KWXE	283A	Glenwood	AR	15.4	120.78	72.0	48.78
LI CN	34 18 38	93 32 04	3.000 kW	100M	75.1	44.8	
		Caddo Broadcasting			BLH-911129KA		

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

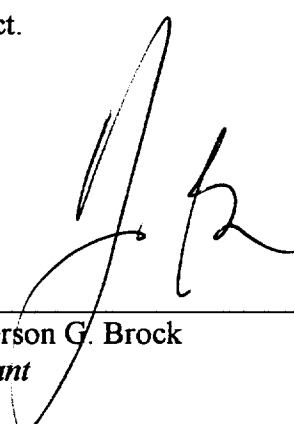
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by In Phase Broadcasting, Inc., permittee of Radio Station KLMZ, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

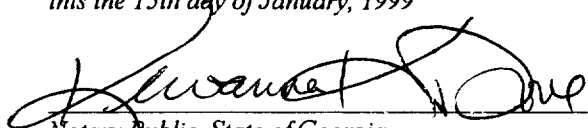
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 15th day of January, 1999.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 15th day of January, 1999*

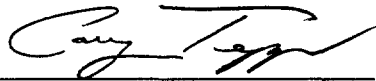


Notary Public, State of Georgia
My Commission Expires: April 20, 2002

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 21st day of January, 1999, I have served a copy of the foregoing "Petition for Rule Making" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2000 M Street, N.W.; Room 544
Washington, D.C. 20554

A handwritten signature in cursive script, appearing to read "Cary Tepper", written over a horizontal line.

Cary S. Tepper, Esq.

*/ indicates delivery by hand